

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:) Chapter 11
River City Renaissance, LC, &) (Joint Administration)
River City Renaissance III, LC,)
Debtors.) Case No. 14-34080-KLP

NOTICE OF MOTION FOR A FINDING OF CIVIL CONTEMPT

PLEASE TAKE NOTICE that counsel for River City Renaissance, LC (“RCR”) and River City Renaissance III, LC (“RCR III”; collectively, the “Debtors”¹), as debtors and debtors-in-possession, through counsel and pursuant to 11 U.S.C. § 105(a) and Rules 9014 and 9020 of the Federal Rules of Bankruptcy Procedure (the “Rules”), move the Court for an Order to Show Cause as to why the Holders should not be held in contempt for their failure to obey the Order of this Court (the “Motion”).

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, then you may wish to consult one.)

If you do not want the Court to grant the Motion or if you want the Court to consider your views on the Application, then you or your attorney should file with the Court, at the address shown below, a written objection **on or before January 19, 2015, which is fourteen (14) days from the date of service of this Notice and the Motion**. If you mail your written objection to the Court for filing, then you must mail it early enough so the Court, and counsel for the Debtors, will **receive it** on or before January 19, 2015.

¹ The final four digits of the federal tax ID numbers for River City Renaissance, LC and River City Renaissance III, LC, respectively, are 8910 and 8102.

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You must also mail a copy to:

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Robert Van Arsdale, Esquire
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Office of the U.S. Trustee
Eastern District of Virginia
701 East Broad Street, Suite 4304
Richmond, Virginia 23219

If you or your attorney do not take these steps, then the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting that relief. In the event that a hearing is requested on the Motion, then you will receive further notice of that hearing.

DATED: January 5, 2015

RIVER CITY RENAISSANCE, LC
RIVER CITY RENAISSANCE III, LC

By: /s/ James K. Donaldson
Counsel

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

<i>In re:</i>)	
River City Renaissance, LC, &)	Chapter 11
River City Renaissance III, LC,)	(Joint Administration)
 <i>Debtors.</i>)	
)	Case No. 14-34080-KLP
 <i>Movants,</i>)	
 <i>v.</i>)	
U.S. Bank National Association, as Trustee,)	
Successor-In-Interest to Bank of America, N.A.,)	
as Trustee, Successor to Wells Fargo Bank, N.A.,)	
as Trustee for the Registered Holders of Wachovia)	
Bank Commercial Mortgage Trust, Commercial)	
Mortgage Pass-Through Certificates,)	
Series 2005-C22, &)	
U.S. Bank National Association, as Trustee,)	
Successor-In-Interest to Bank of America, N.A.,)	
as Trustee, Successor to Wells Fargo Bank, N.A.,)	
as Trustee for the Registered Holders of Wachovia)	
Bank Commercial Mortgage Trust, Commercial)	
Mortgage Pass-Through Certificates,)	
Series 2006-C23, by and through CWC Capital Asset)	
Management LLC; &)	
 <i>Respondents.</i>)	

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MOTION FOR A FINDING OF CIVIL CONTEMPT

River City Renaissance, LC (“RCR”) and River City Renaissance III, LC (“RCR III”; collectively, the “Debtors”²), as debtors and debtors-in-possession, through counsel and pursuant to 11 U.S.C. § 105(a) and Rules 9014 and 9020 of the Federal Rules of Bankruptcy Procedure (the “Rules”), move the Court for a finding that the Holders³ should be held in contempt for their failure to obey an Order of this Court. In support, the Debtors state as follows:

I. PRELIMINARY STATEMENT

1. The Holders have deliberately disobeyed a clear order of this Court, and, to date, have failed to rectify that noncompliance. As a result, the competitive nature and bidding of the auction was chilled. The Holders failed to comply, not only with repeated requests of the Debtors for payoff figures, but with an order of this Court directing them to do so. The Debtors’ lack of this crucial information thwarted the Debtors’ efforts to consummate a stalking-horse agreement in excess of the RCR Holder’s claim. Based on the standard for civil contempt under the Code and the standard espoused by the Fourth Circuit and applied by this Court, evidence exists for a finding that the Holders are in contempt of Court.

II. BACKGROUND

2. On July 30, 2014 (the “Petition Date”), the Debtors each filed with the Court a

² The final four digits of the federal tax ID numbers for River City Renaissance, LC and River City Renaissance III, LC, respectively, are 8910 and 8102.

³The “Holders” are: (1) U.S. Bank National Association, as trustee, successor-in-interest to Bank of America, N.A., as trustee, successor to Wells Fargo Bank, N.A., as trustee for the registered holders of Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2005-C22 (“Trust 2005-C22” or the “RCR Holder”), by and through CWCapital Asset Management LLC, in its capacity as special servicer; and (2) U.S. Bank National Association, as trustee, successor-in-interest to Bank of America, N.A., as trustee, successor to Wells Fargo Bank, N.A., as trustee for the registered holders of Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2006-C23 (“Trust 2006 C-23” or the “RCR III Holder”), by and through CWCapital Asset Management LLC, in its capacity as special servicer (the “Special Servicer”).

voluntary petition seeking relief pursuant to chapter 11 of title of the United States Code (the “Code”).

3. On December 5, 2014, this Court entered the Order Determining Credit Bid Rights of Holders (the “Order”; Doc. No. 250), in which the Court ordered, in part, the following:

Each Holder shall provide to the Debtors an update, in writing, no later than the date set forth below, as to that respective Holder’s Claim, which update shall include: (a) additional regular interest accrued from the date set forth in such Holder’s Claim through the date of such provision or other date that the Debtors may reasonably request; (b) additional default interest accrued from the date set forth in such Holder’s Claim through the date of such provision or other date that the Debtors may reasonably request; (c) a current estimate of all fees, costs, and expenses, including attorneys’ fees, costs, and expenses, incurred from the date set forth in such Holder’s Claim through the date of such provision or other date that the Debtors may reasonably request; (d) an updated calculation of the prepayment premium through the date of such provision or other date that the Debtors may reasonably request; and (e) an updated statement of any funds that Lender holds for application to that Holder’s Loan for items such as escrow and suspense funds. The updated components, set forth above at (a) through (d), plus any sums asserted or claimed due under the respective Claim shall comprise the “Indebtedness.” Each respective Holder shall provide such written updates: (i) no later than five (5) calendar days after entry of this Order; and (ii) on the date that is five (5) calendar days prior to the date of the Auction.

(Doc. No. 250, at 5.)

4. Pursuant to the Order, the updates of the Holders’ claims were due no later than December 10, 2014 and December 13, 2014.

5. The Debtors had requested that the Court order these updates because the updated, alleged amounts of the Holders’ claims were and remain necessary to properly conduct and administer the sale of the properties owned by the Debtors and the cases.⁴ The request that the Court enter such an order was necessary because despite multiple prior requests, the Holders

⁴ A copy of the portion of transcript from the November 24, 2014 hearing wherein Counsel for the Debtors explained to the Court the request for the payoffs and the importance of obtaining the payoffs is attached hereto as Exhibit A.

had failed and/or refused to provide payoff information to the Debtors.⁵

6. Despite the Order, the Holders provided only one update to the Debtors and that update was provided on December 12, 2014 (the “December 12 Update”). (**Exhibit B**, attached hereto.) The stated basis for the delay was that the Special Servicer was awaiting the calculation of the amount claimed for the “Prepayment Premium” from the Master Servicer as the Special Servicer was prohibited from calculating that Prepayment Premium.

7. The December 12 Update provided the estimated payoffs as of January 23, 2015 with the exception of costs and fees which were estimated through December 12, 2014. The payoff figures provided in the December 12 Update were \$31,375,470.09 and \$6,643,946.12 for RCR and RCR III, respectively.

8. The Debtors’ commenced the auction of their real property the morning of December 18, 2014 (the “Auction”).

9. Shortly after 12:00 PM on December 18, 2014, before commencement of the portion of the Auction where bidders would begin bidding on the entire portfolio of each Debtor’s properties, the Debtors and the Holders, by counsel, appeared before the Court for an emergency hearing (the “Hearing”) related to the form of the contract that the Holder(s) would sign if they were the prevailing bidder(s) at the Auction. (Doc. No. 270.)

10. The Debtors and their advisors suspended the Auction during the Hearing, which recommenced after the Hearing.

11. After the Hearing and immediately prior to the recommencement of the Auction, counsel for the Holders informed Debtors’ counsel that there had been a material mistake in the

⁵ On November 13, 2014, counsel for the Debtors requested payoffs from the Holders and informed the Holders’ counsel by telephone that it needed the payoffs the following week. Again on November 20, 2014, Debtors’ counsel discussed with Holders’ counsel by telephone the need for the payoffs. Also, see Note 6, *infra*.

calculation of the December 12 Update caused by double counting of fees and costs and handwrote and gave to Debtors' counsel an updated figure for each Debtor (the "Auction Update"). (Exhibit C, attached hereto.) The payoff figures provided in the Auction Update were \$30,637,372.78 and \$6,520,222.32 for RCR and RCR III, respectively.

12. Based on the statements made by counsel for the Holders when the Auction Update was presented, Debtors' counsel understood the two figures provided to be the updated payoff figure for each of the Debtors. In fact, the Debtors' motion seeking approval of the sale, among other relief, filed with the Court fewer than twenty-four (24) hours after conclusion of the Auction represents the Debtors' understanding that the Auction Update constituted the Holders' claimed respective indebtedness due from each Debtor. (Doc. No. 271, at 9.)

13. The Auction recommenced and was ultimately completed with the Holders as the respective prevailing bidders for both the real property owned by RCR with a prevailing bid of \$30,500,000 and the real property owned by RCR III with a prevailing bid of \$6,235,000.

14. On December 22, 2014, counsel for the Debtors and the Holders had a call to discuss the cases and issues related to the closing of the sales of the real property. During this call, counsel for the Holders informed Debtors' counsel that the Auction Update was not the corrected, updated payoff but rather the maximum amounts that the Holders intended to bid at the Auction. Counsel for the Holders stated that the actual corrected, updated claim amounts due were \$30,887,372.78 and \$6,520,222.32 for RCR and RCR III, respectively.

15. To date, the Holders have not complied with the Order, because the Holders have not provided to the Debtors updated payoff figures in accordance with the Order.

III. ARGUMENT

16. The need for correct and timely payoff figures are critical for a fair and successful

sale and auction because the Debtors and its professionals need to know what sales price is necessary to top the amount of the indebtedness for a variety of reasons, including but not limited to negotiating with potential stalking horse bidders, preparing sale and auction strategy, and preparing for the auction based on the amounts of the initial bids (or other offers) versus the amount of the indebtedness

17. The refusal to provide updated payoff numbers in accordance with the Order and prior to the sale and auction comports with a pattern of behavior by the Holders as it relates to provision of financial and other information to the Debtors to which the Debtors are entitled and are necessary to properly conduct a sale and auction and administer the cases.⁶

18. “Section 105 of the Bankruptcy Code provides that ‘[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.’” *In re Hookup, L.L.C.*, No. 12-33202-KRH, 2013 Bankr. LEXIS 170, at *6 (Bankr. E.D. Va. Jan. 15, 2013) (citing 11 U.S.C. § 105(a)). “The Fourth Circuit has interpreted this subsection to empower bankruptcy courts to issue civil contempt orders.” *Hookup*, 2013 Bankr.

⁶ As set forth in prior documents filed with the Court, the Debtors’ counsel began requesting payoff information in mid-July and was repeatedly assured that it was forthcoming. The requests and assurances included requests to the Holders’ counsel via telephone on or about July 25, 2014, assurance from the Holders’ counsel in person at the July 30 hearing before the Circuit Court that payoffs had been requested and would be produced. The Debtors then issued formal discovery on the Holders and the Special Servicer for the previously promised information, seeking payoff amounts, breakdowns, and payment histories. The parties resolved the discovery requests via agreement, by which the Holders would provide documents and information on or before August 22, 2014, including payoff amounts, breakdowns, and payment histories. The Holders did not produce these documents or this information on or before August 22, 2014. Thus, Debtors’ counsel sent a letter to the Holders’/Special Servicer’s counsel requesting all information and documents, including payoffs and the payment histories. The Debtors received no response to that letter. Via telephone and e-mail on September 25, 2014, Debtors’ counsel, again, inquired as to when the documents and information would arrive, and the Holders’ counsel responded on September 25 that “You’ll have those before the weekend.” On Monday, September 29, Debtors’ counsel was told that the information will be provided before a hearing on October 1, 2014. The evening before the October 1, 2014 hearing, Debtors’ counsel received from the Holders’ counsel a figure that was a reiteration of the “no less than” aggregate sum claimed to be due that was stated in the Holders’ Objection to Cash Collateral. Finally, on October 3, 2014, payoffs as of the petition date were provided but with the statement that they “should not be considered final or otherwise binding on my client.” Despite all of their requests, the Debtors did not receive any payoffs for the alleged amounts due post-petition under the loans until the December 12 Update. Also, each Debtor will be filing with the Court a Motion to Compel Discovery in the claims objection contested matter (the “Claims Objection Matter”) due to the Holders objection to some of the discovery and their failure to provide all responsive documents pursuant to discovery deadlines.

LEXIS 170, at *6 (citing *Burd v. Walters* (*In re Walters*), 868 F.2d 665, 669-71 (4th Cir. 1989)).

19. The Fourth Circuit enumerated four elements that comprise the standard to establish civil contempt:

(1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) . . . that the decree was in the movant's favor; (3) . . . that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and (4) . . . that [the] movant suffered harm as a result.

Ashcraft v. Conoco, Inc., 218 F.3d 288, 301 (4th Cir. 2000) (internal citations and quotation marks omitted).

20. In *Hookup*, Judge Huennekens found that a corporate designee had misrepresented intentionally the financial condition concerning an entity's ability to pay rent to a debtor. *Hookup*, 2013 Bankr. LEXIS 170, at *13. That designee's "intentional misrepresentations at [a hearing] constituted misbehavior amounting to an obstruction of justice." *Id.* There, the designee's misrepresentations and omissions "bore directly upon the true nature of [the entity's] financial condition." *Hookup*, 2013 Bankr. LEXIS 170, at *9. Ultimately, the Court found the designee in contempt and awarded sanctions against him. *Id.*, at *13.

21. In this matter, each element necessary to find the Holders in contempt exists. The Order, entered on December 5, 2014, precisely establishes when the Holders were required to provide to the Debtors payoff figures. Second, the Order favored the Debtors by imposing an affirmative obligation on the part of the Holders, owed to the Debtors and critical to the sale and a fair Auction. Third, the Holders violated the terms of the Order, and remain in violation of the Order.

22. Finally, the Debtors have suffered harm as a result of the Holders' failure to

comply with the Order. The Holders' pattern of refusal to disclose payoff information, which culminated in the noncompliance and misstatements, prejudiced the Debtors. This behavior materially impaired the Debtors' efforts to obtain a stalking-horse bidder for their properties. For example, RCR received an offer from a third-party purchaser willing to act as a stalking-horse bidder as to RCR's properties at a price of \$32,000,000 with certain stalking-horse protections. Based on the information known to the Debtors and provided to the Debtors by the Holders concerning the amount of the Holders' claims, the Debtors, in their business judgment, could not enter into a contract with the potential stalking-horse bidder at \$32,000,000.⁷

23. With correct and timely payoff figures, a stalking-horse bidder at a purchase price of \$32,000,000, compared to a payoff of less than \$30,900,000, would have been acceptable, could have potentially been obtained, and would have had a material effect on the outcome of the Auction. The lack of payoff information also hampered negotiations with other potential stalking-horse bidders. The erroneous December 12 Update hampered the Debtors' ability to evaluate whether to contact other potential stalking-horse bidders again prior to the Auction, which they could have done had they known the correct payoff as ordered by the Court.

24. The Holders' continued recalcitrance and misdirection concerning the accuracy of the debts that the Debtors owe has and will continue to prejudice the Debtors absent intervention from the Court.

25. Moreover, the Holder as to RCR has benefitted from this violation of the Order by obtaining RCR's properties at an artificially low amount.

26. The refusal to provide payoff information and correct payoff information has had

⁷ For example, during one phone call where the payoff information was requested of Holders' counsel, counsel for the Debtors said that the RCR Debtor estimated the updated RCR payoff to be around \$31,500,000 and counsel for the Holders informed Debtors' counsel that number sounded about right.

a material negative effect on the sale and administration of the bankruptcy cases and the claims objection process. Further, the Holders intentional and/or grossly negligent refusal to obey the Order and provide the accurate payoff information materially hindered the sale and Auction and the Debtors' attempts to maximize recovery for the estates. As a result, the Debtors incurred, and continue to incur, unnecessary fees in this matter.

27. This Court should issue an order finding the Holders in civil contempt of Court for their refusal and failure to abide by the Order.

28. The Debtors are examining their potential causes of action against the Holders for their actions in this matter, including their actions that culminated in the violation of the Order and reserve all rights to file an adversary proceeding asserting causes of actions and claims related to such actions.

29. The Debtors request a waiver of Local Bankruptcy Rule 9013-1(G), which requires a separate memorandum of points and authorities to accompany a motion.

WHEREFORE, the Debtors respectfully request that the Court enter an Order:

(a) Finding the Holders in contempt of Court and reserving the rights of the Debtors for a determination of the monetary amount of the damages and sanctions related to the Holders' contempt until requested by the Debtors, whether in connection with this Motion for a Finding of Civil Contempt, an adversary proceeding, or other matters filed by the Debtors in this case;

(b) Requiring that sworn, verified, correct, and final binding payoff figures be provided to the Debtors within seven (7) days of the date of entry of the Court's Order on this Motion for a Finding of Civil Contempt; and

(c) For such other and further relief as the Debtors request or the Court deems just and proper due the Holders' failure to comply with the Order.

DATED: January 5, 2015

RIVER CITY RENAISSANCE, LC
RIVER CITY RENAISSANCE III, LC

By: /s/ James K. Donaldson
Counsel

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Counsel for the Debtors &
Debtors-In-Possession

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2015 I caused to be served a copy of the foregoing Notice and Motion to be served via electronic mail or notice on all parties that receive CM/ECF notification, including the following persons, including all necessary parties:

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Richmond, VA 23219

/s/ James K. Donaldson

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re: _____)
) Chapter 11
) (Joint Administration)
River City Renaissance, LC, & _____)
River City Renaissance III, LC, _____)
)
Debtors.) Case No. 14-34080-KLP
)
_____)

MOTION FOR A FINDING OF CIVIL CONTEMPT

EXHIBIT A

Robert H. Chappell, III, Esq. (VSB No. 31698)
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IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA (RICHMOND)

In re) Case No. 14-34080-KLP
RIVER CITY RENAISSANCE, LC, et al.,) Richmond, Virginia
Debtors.) November 24, 2014
) 11:09 AM
)
)

TRANSCRIPT OF HEARING

[159] CONTINUED MOTION TO APPROVE SALE AND BID PROCEDURES
AND RELATED RELIEF

[176] DEBTOR'S MOTION FOR ENTRY OF AN ORDER EXTENDING EXCLUSIVE PERIODS WITHIN WHICH TO FILE A CHAPTER 11 PLAN AND SOLICIT VOTES THEREON

[223] MOTION TO ASSUME LEASES AND APPROVAL OF LEASE
ASSUMPTION AND ASSIGNMENT PROCEDURES AND RELATED NOTICE
[224] MOTION TO EXPEDITE HEARING ON LEASE ASSUMPTION AND

**ASSIGNMENT PROCEDURES MOTION
BEFORE THE HONORABLE KEITH L. PHILLIPS.**

UNITED STATES BANKRUPTCY JUDGE

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2 Debtors: ROBERT H. CHAPPELL, III, ESQ.
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24 PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

25 TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

1 dispute, if we're unable to agree on an issue -- what can be
2 produced, what's privileged, et cetera.

3 So from our standpoint, it's just too tight. And so
4 for that reason we think the March 6th summary judgment
5 filing, argue the last week of March, if need be, have a trial
6 the end of April, is a reasonable time frame.

7 THE COURT: Fine. What's the third issue?

8 MR. CHAPPELL: That's really it.

9 THE COURT: I thought you said there were three.

10 MR. CHAPPELL: Yes. There is one other issue, Your
11 Honor. And I'm hopeful we'll be able to resolve it. I don't
12 think we've finished talking about it. But we are, we hope,
13 very close to being able to strike a deal with a stalking
14 horse in order to have on RCR -- not RCR III, but on RCR to
15 have a stalking horse bid that we believe, based on our
16 calculation of what the holders' payoff should be in January
17 and factoring in a generous -- what we think is a generous
18 amount of attorneys' fees, we think we have a deal that would
19 pay them in full even if they prevail completely, pay the
20 administrative expenses, and have at least some recovery for
21 the unsecureds. And so we would very much like to take that.
22 But it doesn't do us any good to take on a stalking horse and
23 award them bid protections -- obviously all of this would be
24 subject to Your Honor's discretion after notice and hearing --
25 but it doesn't do us any good to do that if it turns out that

1 the actual payoff is materially higher than we thought it was,
2 and we haven't even cleared that bar in the contract.

3 And so we have written into the order a provision
4 requiring the holders to give us a payoff immediately, to give
5 us one right before the auction, and then, upon reasonable
6 request, in between. They have countered with a provision
7 that has them giving us one shortly before the auction. And,
8 candidly, that is a material impediment to us. I mean, we
9 really need to know what their estimated payoff will be,
10 because that yield maintenance premium changes depending --

11 THE COURT: You need to know it before you accept the
12 stalking horse is what you're saying? The proof of claim
13 doesn't give you enough information?

14 MR. CHAPPELL: The proof of claim is as of the filing
15 of the petition, and it includes a per diem for the interest
16 and the default interest. However, it does not include --
17 we're not comfortable whether we have accurately calculated
18 the yield maintenance premium that would be due in January in
19 a payoff. And we also have no idea what post-petition fees
20 and costs are. And so we are concerned about putting the
21 estate in a position where what we thought was going to
22 benefit everyone actually becomes a burden. And so we really
23 need to get a payoff as of mid-January from them now.

24 We recognize that the attorneys' fees would have to
25 be an estimate, or maybe that component could only be to date.

1 But that is a problem that we need help with. We're hopeful
2 we can solve it with negotiation, but we haven't been able to
3 yet. And I understand there are mechanical problems, because
4 the special servicer doesn't provide it. They have to go back
5 to the master servicer, and the master servicer has a certain
6 number of days to generate it and a variety of issues arising
7 from the securitization. I'm sure Mr. Rahman will speak to
8 that. But that is a place where our orders do differ. If we
9 were to submit them to Your Honor, that is a place where they
10 do differ.

11 THE COURT: Well, look. If you get a payoff as of
12 mid-January, are you going to hold them to that payoff?

13 MR. CHAPPELL: I think we would. I think we would.
14 Yes, Your Honor.

15 THE COURT: You would say that's the most you could
16 possibly get? They can't come back later and ask me to
17 reconsider it?

18 MR. CHAPPELL: I don't think we would say that, but I
19 think -- first of all, as to the attorneys' fees, it could
20 only be an estimate. And so who knows what will come up, what
21 work Mr. Rahman and his firm will need to do. But certainly I
22 don't think it's too much to ask them to calculate that yield
23 maintenance premium through January, and I don't think it's
24 too much to ask them to tell us where they are now on
25 attorneys' fees. Because it could material.

1 They're very good lawyers. We feel they're very
2 expensive. And we want to make sure that there isn't a much
3 larger professionals' claim lurking out there than we
4 anticipate.

5 THE COURT: All right. Okay. Thank you.

6 MR. CHAPPELL: Thank you, Your Honor.

7 MR. RAHMAN: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. RAHMAN: Robbin Rahman with Kilpatrick Townsend
10 on behalf of the holders, by and through CWCapital as the
11 special servicer. Before we dive in, Your Honor, I just want
12 to thank you again for indulging our scheduling of this order.

13 THE COURT: I'm happy to do that.

14 MR. RAHMAN: Yes. So we appreciate it. This issue
15 is very important to my client. We very much appreciate it.

16 Just, sort of, tackling the -- I guess the low-lying
17 fruit first. I think Mr. Chappell understates a little bit
18 the difference between the two orders on the update issue. So
19 just to give you an example, what is in there currently
20 contemplates, conceivably, an unlimited number of updates that
21 would be required from my client.

22 First would be five days after entry of the order.

23 Second would be five days prior to the auction. And, finally,
24 ten days after a request by the debtors, with no conceivable
25 cap on how many updates they would want.

1 And so, really, that's the fundamental problem we
2 have. We agree that at some point it makes sense to give them
3 an update of what our post-petition claims are. Our view was
4 that what you really need is an update prior to our credit bid
5 to establish the amount of our indebtedness before we credit
6 bid.

7 THE COURT: Well, that and --

8 MR. RAHMAN: If they think --

9 THE COURT: And also, apparently, the deal with the
10 potential stalking horse bidder.

11 MR. RAHMAN: Correct, Your Honor. I think, perhaps,
12 Mr. Chappell overstates that a bit, as well, because if the
13 question is -- if it's a close question as to whether our
14 claim will eat up any value of the stalking horse bid, then I
15 would think undeniably the stalking horse agreement should not
16 be entered into and --

17 THE COURT: But they need an estimate in order to --

18 MR. RAHMAN: And I think they have everything they
19 need for that particular purpose. If they're --

20 THE COURT: Except for the yield maintenance premium.
21 I mean --

22 MR. RAHMAN: Correct, but that can only go down.
23 That can only go down, because time is -- the time between
24 today and the original maturity is getting shorter, and that's
25 how yield maintenance works. It doesn't go up. It goes down.

1 So that number --

2 THE COURT: Can you estimate how quickly it goes
3 down?

4 MR. RAHMAN: I mean, it's basically by month. I
5 mean, you reevaluate every month as to what the number would
6 be.

7 THE COURT: I mean, is the criteria available from
8 which the numbers can be determined?

9 MR. RAHMAN: Do the debtors have the criteria?

10 THE COURT: By the debtor or by you. I mean, I'm
11 just wondering why --

12 MR. RAHMAN: Sure. We --

13 THE COURT: -- it's such a --

14 MR. RAHMAN: We could --

15 THE COURT: -- difficult thing to --

16 MR. RAHMAN: As Mr. Chappell alluded to, we could
17 back to the master servicer and ask for an updated estimate.
18 Not estimate, an updated amount for the yield maintenance as
19 of a specific date.

20 The normal business practice is to give it as of --
21 not a far-off date, but as of a very near date, usually within
22 two weeks or something like that.

23 THE COURT: I'm wondering why there's difficulty with
24 that --

25 MR. RAHMAN: Well, because it's tied to the markets

1 to some extent, so markets fluctuate, and so if you give it
2 too far out based upon the way rates are today it may not
3 accurately reflect.

4 THE COURT: Well, but that wouldn't be a huge
5 difference, though, would it?

6 MR. RAHMAN: That's, sort of, my point. None of
7 these things are going to be a huge difference one way or the
8 other. They have per diem. That is the most significant
9 number for interest. They know how -- they can calculate what
10 default interest would be based upon the percentages that are
11 in the agreement. And although they may think that we're
12 expensive, there are, essentially, half of the number of
13 lawyers working on this issue on our side as are on their
14 side. They could use their own fees to figure out --

15 I don't want to debate whether they could or could
16 not estimate this number.

17 THE COURT: Well, you can give them -- you can give
18 an update on fees periodically.

19 MR. RAHMAN: Correct.

20 THE COURT: I mean, I heard Mr. Chappell saying that
21 he only needed this payoff figure as of mid-January and then
22 after the sale. So would that be difficult for you to give
23 him those estimates on those two dates?

24 MR. RAHMAN: I think that's the same date, unless I'm
25 misunderstanding.

1 MR. CHAPPELL: It's the same date, effective mid-
2 January, which is the closing date, but we'd like one now and
3 then there --

4 THE COURT: Oh, one now and one then.

5 MR. CHAPPELL: That's correct, Your Honor.

6 THE COURT: Well, so he's just asking for two. Is
7 that --

8 MR. RAHMAN: If that's the ask, Your Honor, I think
9 we can probably come up with it, but that's not what's in the
10 order as drafted.

11 THE COURT: Oh. Well, you can change the order,
12 because I'm hearing him say now just now and mid-January.

13 So, Mr. Chappell, is that acceptable to amend the
14 order that you --

15 MR. CHAPPELL: That'd be fine, Your Honor.

16 THE COURT: Okay. So we've got that issue resolved?

17 MR. RAHMAN: I think that would be fine.

18 THE COURT: Okay. All right. So then we go back to
19 the first two.

20 MR. RAHMAN: Sir, would you like to go to the pre-
21 trial schedule first or the credit bid?

22 THE COURT: Okay. Let's do the pre-trial.

23 MR. RAHMAN: That one might be a little bit easier.

24 THE COURT: I was thinking -- I was wondering if
25 this -- this might be a case where mediation might be

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re: _____)
) Chapter 11
) (Joint Administration)
River City Renaissance, LC, & _____)
River City Renaissance III, LC, _____)
)
Debtors.) Case No. 14-34080-KLP
)
_____)

MOTION FOR A FINDING OF CIVIL CONTEMPT

EXHIBIT B

Robert H. Chappell, III, Esq. (VSB No. 31698)
Timothy G. Moore, Esq. (VSB No. 41730)
Jennifer J. West, Esq. (VSB No. 47522)
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Counsel for the Debtors & Debtors-In-Possession

Tim Moore

From: Rahman, Robbin <Rrahman@kilpatricktownsend.com>
Sent: Friday, December 12, 2014 8:13 PM
To: Robert Chappell; Tim Moore
Cc: Pulliam, Jim; Levin, Matthew
Subject: RCR Holder's Updated Payoff

Robert & Tim –

As requested, the below represents the updated payoff amount for the RCR Holder. These amounts are calculated as of the outside closing date (1/23/15), except for fees which are estimated as of today (12/12/14) as best as possible.

Principal	\$26,371,077.65
Contract Interest	\$1,590,000.18
Prepayment Premium	\$878,679.57
Default Interest	\$1,285,888.96
Late Charges	\$135,787.21
Fees	\$1,424,329.44
Subtotal	\$31,685,763.00
Suspense Funds	(\$310,292.91)
TOTAL PAYOFF	\$31,375,470.09
Annual Daily interest	\$6,838.23



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Tim Moore

From: Rahman, Robbin <Rrahman@kilpatricktownsend.com>
Sent: Friday, December 12, 2014 8:14 PM
To: Robert Chappell; Tim Moore
Cc: Pulliam, Jim; Levin, Matthew
Subject: RCR III Holder's Updated Payoff

Robert & Tim –

As requested, the below represents the updated payoff amount for the RCR III Holder. These amounts are calculated as of the outside closing date (1/23/15), except for fees which are estimated as of today (12/12/14) as best as possible.

Principal	\$5,575,555.15
Contract Interest	\$415,484.17
Prepayment Premium	\$271,223.18
Default Interest	\$271,343,.68
Late Charges	\$29,763.50
Fees	\$229,059.08
Subtotal	\$6,792,428.77
Suspense Funds	(\$148,482.65)
TOTAL PAYOFF	\$6,643,946.12
Annual Daily interest	\$1,505.40



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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

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River City Renaissance, LC, &)
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Debtors.) Case No. 14-34080-KLP
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MOTION FOR A FINDING OF CIVIL CONTEMPT

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Through 1/23/15

RCR:

\$30,637,372 .78

RCR III:

\$6,820,222.32